
FROM ADEQUACY TO ASSESSMENTS: CROSS-BORDER DATA TRANSFER REGIMES IN INDIA AND EUROPE

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ABSTRACT

India is the home to a large number of refugees from across the world over the decades. The common ones include- Tibetans from China, Sri Lankan Tamils, Chakma and Hajongs from Bangladesh, Afghans and the most recent ones Rohingyas native to Myanmar. Although most of the groups have been accepted by India, some groups such as Rohingyas are considered to be illegal immigrants. This suggests the differential treatment of refugees in India. This paper seeks to make a comparison between two such groups i.e. Tibetans who have been granted refuge on grounds of deep-rooted historical and cultural ties and on the other hand – Rohingyas who have been rejected refuge on grounds of threat to the national security. It further explores the existing laws and constitutional provisions relating to refugees in India and a discussion on international character of laws such as UNHCR, etc.

Key Words: - *Refugees, Illegal immigrants, Differential treatment, National security, International character.*

I. INTRODUCTION

Refugees are the individuals who have escaped from their own country for political, religious or economic reasons or because of a war.¹ These people are unable or unwilling to return to their native country. No individual would want to leave their country where they have lived on for decades out of choice. Therefore, such movements are involuntary as people are compelled to flee. They migrate to other countries in search of safety and conditions that support a dignified life. It is, thus, made a necessity because of factors including war, forced conversions, lack of basic necessities, environmental concerns, etc.

The refugees are forced to move and such experience is usually traumatising for them. It affects their human rights to a great extent. They face social exclusion and exploitation in the host countries. Many a times, they are not provided adequate shelter, food, healthcare and educational facilities, employment opportunities, etc. The international covenants, laws and regulations including 1951 Refugee Convention and 1967 Protocol are also instrumental in promoting refugee rights. United Nations High Commissioner for Refugees (UNHCR) is an international body working for refugee protection. The principle of non-refoulement constitutes the cornerstone of international refugee protection.²

India is not a signatory to the 1951 Convention and 1967 Protocol. Also, there is no specific law within India governing refugees. Yet, India has significantly hosted many refugees over time; but this consistent hosting without a comprehensive legal framework produces a tension between humanitarian commitments and security imperatives³. Such a dilemma is the primary reason for differential treatment to various refugee groups in India. The paper highlights the comparative study between two such groups- Tibetans: the ethnic group from China and Rohingyas: the ethnic group native to Myanmar.

The Tibetan refugees have been accepted by India on historical and cultural grounds. They are given shelter in recognised settlements; granted economic opportunities, liberty to practice their religion and culture, etc. The Government has framed various welfare schemes for their benefit.

¹refugee. Available at: <https://dictionary.cambridge.org/dictionary/english/refugee>

²4aa661809. Available at: <https://www.unhcr.org/sites/default/files/legacy-pdf/4aa661809.pdf>

³D Sarkar, *India's Refugee Policy And Human Rights Concerns: A Critical Analysis*, 13 International Journal for Creative Research Thoughts (2025).

Moreover, many have become eligible for Indian citizenship although only if they fulfill certain criteria. On the other hand, there are Rohingya refugees who are considered as ‘illegal immigrants’ and face violence. They are also subjected to deportation on grounds of national security concerns. They have been exploited and discriminated on many factors. Also, they are subjected to lack of basic amenities to live a dignified life. This paper seeks to explore answers to questions regarding such differential treatment to be a ‘justified distinction’ or an ‘arbitrary discrimination’.

II. LITERATURE REVIEW

- 1) **India’s Refugee Policy And Human Rights Concerns: A Critical Analysis:**⁴ This research paper talks about India’s refugee policy and their human rights in depth. This also mentions the challenges and recommendations in such implementation.
- 2) **Legal Protection of Refugee Rights: Challenges and Solutions:**⁵ This journal article discusses the legal framework for protection of refugee rights and emphasizes on the challenges to its implementation.
- 3) **Refugee Protection in International Law: Sanctuary States, and Challenges:**⁶ This journal analyses the international framework related to historical development and legal status of refugees in a comprehensive manner. It also talks about the position in India, its challenges and recommendations.
- 4) **TIBETAN REFUGEE POPULATION IN INDIA (Reflections on India’s Policy and India-China Relations):**⁷ This paper studies in great depth the distribution of Tibetan population, Tibetan refugees in India, their legal status and benefits given by the government and also India- China relations.

⁴D Sarkar, *India’s Refugee Policy And Human Rights Concerns: A Critical Analysis*, 13 International Journal for Creative Research Thoughts (2025).

⁵Florica Braşoveanu, *Legal Protection of Refugee Rights: Challenges and Solutions*, 52 Technium Social Sciences Journal 139–144 (2023).

⁶Jansi S, *Refugee Protection in International Law: Sanctuary States, and Challenges*, 10 International Journal of Research and Analytical Reviews (2023).

⁷Jaskaran Singh Waraich & Anuradha Chaudhary, *TIBETAN REFUGEE POPULATION IN INDIA (Reflections on India’s Policy and India-China Relations)*, 42 Association of Population Geographers of India 85–96 (2020).

- 5) **The Rohingya refugee crisis: political and humanitarian perspectives:**⁸This journal article studies the background, political concerns and humanitarian perspectives of the Rohingya refugees.
- 6) **PROTECTION OF REFUGEE'S RIGHTS IN INDIA: LEGAL PERSPECTIVE:**⁹This paper discusses in detail the historical background and legal mechanism for protection of refugee rights in India. Apart from this, it also talks about the constitutional provisions and judicial intervention related to refugees.
- 7) **FROM RAKHINE TO THE BORDERLANDS: THE ROHINGYA CRISIS AND ITS IMPACT ON INDIA-MYANMAR RELATIONS:**¹⁰This research paper sheds light on the India- Myanmar relations and the Rohingya refugee crisis. It further explains India's role and response to this crisis.
- 8) **BETWEEN PROTECTION AND PERIL: A CASE-LAW ANALYSIS OF REFUGEE RIGHTS AND NATIONAL SECURITY IN INDIA:**¹¹This paper discusses the international and Indian legal framework, refugee policy, its impacts and recommendations, and role of judiciary, etc. through case law analysis.
- 9) **Protection of refugees in India: An analysis:**¹²This work focuses on the Indian perspective of refugees related to historical background, legislative and judicial protections, constitutional provisions, role of UNHCR in India and issues faced by the refugees in India.
- 10) **The Routledge Handbook of Refugees in India:**¹³This book is a valuable source on refugees in India, laws and policies, experiences of different refugee groups like Rohingyas, Pakistani and Bangladeshi Hindus, Tibetans, Afghans, etc. and also explores the emerging issues related to them.

⁸Kabir Md Shahin&Moyenul Hasan, *The Rohingya refugee crisis: political and humanitarian perspectives*, 23 Southeast Asia A Multidisciplinary Journal 151–161 (2023).

⁹Mihir Umesh Inamdar & Dr. Abhijeet Ramkrishna Dhere, *PROTECTION OF REFUGEE'S RIGHTS IN INDIA: LEGAL PERSPECTIVE*, 10 JSS Journal for Legal Studies and Research 39-49 (2024).

¹⁰Nidhi Ahmed Barua, *FROM RAKHINE TO THE BORDERLANDS: THE ROHINGYA CRISIS AND ITS IMPACT ON INDIA-MYANMAR RELATIONS*, 9 IJNRD, g657-g663 (2024).

¹¹Nishita, *BETWEEN PROTECTION AND PERIL: A CASE-LAW ANALYSIS OF REFUGEE RIGHTS AND NATIONAL SECURITY IN INDIA*, 7 Indian Journal of Law and Legal Research 2686–2694 (2025).

¹²Pooja Makhijani, *Protection of refugees in India: An analysis*, 6 IJLPSR, 61-65 (2024).

¹³S. Irudaya Rajan, *The Routledge Handbook of Refugees in India* (2022).

- 11) **REFUGEE CRISIS IN INDIA:**¹⁴This article helps us to know the arrival of different refugees in India with a focus on Tibetans, Rohingyas and Sri Lankan refugees; and also evaluates the feasibility of refugee law in India.

III. RESEARCH METHODOLOGY

For this research paper, the methodology implied is- Mixed Approach i.e. mix of qualitative and quantitative data. It starts with a research topic, then finding and analysing relevant sources and finally working upon the research gap. The research is based on secondary resources i.e. journals, constitutional provisions, case laws, research articles, and other academic publications. The paper also incorporates empirical sources like government data, legislative observations and data from United Nations websites. Together, both aspects have assisted in the understanding of various dimensions of the issue. I have also addressed my perspective under the sub-heading of 'Critical Analysis'. In my opinion, this paper has two limitations which may restrict its scope. Firstly, it does not include the ground realities i.e. opinion of the people and is completely based upon existing data. Secondly, interpretations vary as the data changes. The citation style followed throughout is Bluebook Law Review. I have tried my best to incorporate all the relevant and necessary information regarding this topic in this research paper.

IV. RESEARCH GAP

The research gap I found was that there are papers talking about international laws and Indian policies with respect to refugees. There are also papers that specifically mention about the Tibetan refugees and Rohingya crisis. However, my paper seeks to explore the issue of differential treatment given to the refugee groups in India, that is missing in the papers best to my knowledge.

V. HYPOTHESIS

The differential treatment of refugees in India reflects justified distinction rather than arbitrary discrimination.

VI. RESEARCH OBJECTIVES

¹⁴ Sahana G S, REFUGEE CRISIS IN INDIA, 9 IJNRD, e196-e203 (2024).

1. To study the research gap of differential treatment of refugees in India and its underlying factors.
2. To understand the historical background and legal status of Tibetan refugees and Rohingya refugees and make a comparative analysis.

VII. RESEARCH QUESTIONS

1. Under Indian law, what is the present legal status of Tibetan refugees and Rohingya refugees?
2. What are the key differences in access to rights to both the aforementioned groups?
3. Does such a differential treatment, as between these groups in India amount to a violation of the principle of equality and non-discrimination under international law?

VIII. INTERNATIONAL FRAMEWORK ON REFUGEE RIGHTS

The world was devastated after World War II which caused suffering to the global population. This scenario led the international community to recognize the need for collective action, which later on led to the establishment of the United Nations Organisation in 1945. Article 13 of the Universal Declaration of Human Rights (adopted in 1948) provides the right to freedom of movement and residence within the borders of each state and the right to leave or return to any country. Article 14 also enshrines right to seek and enjoy asylum from persecution.¹⁵ Although UDHR does not exclusively focuses on refugees, it serves as a fundamental document addressing refugee crisis.

The United Nations High Commissioner for Refugees is the UN Agency that is fundamental in protecting the rights and well-being of the refugees globally. It seeks to ensure basic necessities and welfare of the people. It is committed to protecting lives and making a better future for the refugees and stateless people. UNHCR works in over 130 countries across seven regions to protect and assist the world's refugees, internally displaced communities and stateless people.¹⁶ It delivers assistance in emergencies, ensuring food security, health and hygiene as its primary

¹⁵ Universal declaration of human rights preamble, https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf.

¹⁶Where we work, UNHCR, <https://www.unhcr.org/where-we-work>.

tasks. Apart from this, it also promotes access to education, economic inclusion, etc.

The 1951 Refugee Convention and its 1967 Protocol are the key legal documents that form the basis of UNHCR's work. They define the term 'refugees' and outline their rights and the international standards of treatment for their protection.¹⁷ The 1951 Geneva Convention, adopted on 28th July 1951, is the cornerstone of international refugee law. It seeks to define who a refugee is, and also affirms the principles of non-discrimination (given under Article 3), freedom to practice their religion (given under Article 4), continuity of residence (given under Article 10), access to courts (given under Article 16), etc. It also accords the refugees with a wage-earning employment (given under Article 17), housing (given under Article 21), public education (given under Article 22) and social security (given under Article 24). This Convention also grants rights to such groups such as right to administrative assistance (given under Article 25), freedom of movement (given under Article 26), etc.

The 1967 Protocol, adopted on 4th October 1967, removes the geographic and time-based limitations which was initially applied to protecting European refugees. But this Protocol expanded the 1951 Convention to apply globally and protect all persons fleeing conflict and persecution.

Moreover, 1969 Organisation of African unity (OAU) Convention governing the specific aspects of refugee problems in Africa and the 1984 Cartagena Declaration on refugees in Latin America also marked regional efforts to address refugee challenges and broadened the scope of refugee protection.¹⁸

The principle of non-refoulement is also a crucial part of international refugee law. It guarantees that no person should be returned to a country where they would face violence and cruelty or treated inhumanly. Thus, international law provides a comprehensive framework for the protection and promotion of the refugee rights universally. As per the data of end of June 2025 by UNHCR, approx. 117.3 million people worldwide are forcibly displaced; out of which about 30.49 million are the refugees, about 67.79 million are the internally displaced and about 84.21

¹⁷1951 Refugee Convention.. Available at: <https://www.unhcr.org/about-unhcr/overview/1951-refugee-convention>.

¹⁸Jansi S, *Refugee Protection in International Law: Sanctuary States, and Challenges*, 10 International Journal of Research and Analytical Reviews (2023).

million are the asylum seekers.¹⁹

IX. INDIA'S APPROACH TO REFUGEE REGULATION

India is not a signatory to the 1951 Convention or the 1967 Protocol, primarily because such international policies fail to consider the complex security challenges of South Asian region. Moreover, it has no specific and formal law governing refugees and seeks to handle such matters independently, often through a mix of legislations, constitutional provisions, and administrative policies & actions. India has embraced more than 240,000 refugees and asylumseekers as identified and registered by UNHCR by the end of 2024.²⁰In the absence of a dedicated legal framework, refugees in India fall under the purview of following legislations:²¹

- a) The Immigration and Foreigners Act, 2025 (which replaced the Foreigners Act of 1946)
- b) The Passport (Entry into India) Act, 1920
- c) The Citizenship (Amendment) Act, 2019
- d) The Illegal Migrants (Determination by Tribunals) Act, 1983 ; etc.

The Foreigners Act of 1946, replaced by the Immigration and Foreigners Act, 2025 has been imposed to handle refugee matters. Although it does not define the term 'refugee' but defines the term 'foreigner' as a person who is not a citizen of India.²² Section 3 of this Act grants power to prohibit the entry or restrict the stay of foreigners in India if they do not have valid travel documents, visa or passport, or due to threat to national security, sovereignty and integrity of India, etc. The new Act also provides for a mandatory biometric and digital registration.

The Passport (Entry into India) Act, 1920 made it necessary for the persons entering India to be in possession of passports, so technically a refugee commits an offence by entering into the territory without a passport. It also gives power to the government to exempt any person or class

¹⁹UNHCR, the UN Refugee Agency, UNHCR, <https://www.unhcr.org/>.

²⁰<https://www.unhcr.org/where-we-work/countries/india>.

²¹Mihir Umesh Inamdar & Dr. Abhijeet Ramkrishna Dhare, *PROTECTION OF REFUGEE'S RIGHTS IN INDIA: LEGAL PERSPECTIVE*, 10 JSS Journal for Legal Studies and Research 39-49 (2024).

²²India Code: Section Details. Available at:https://www.indiacode.nic.in/show-data?abv=CEN&statehandle=123456789/1362&actid=AC_CEN_5_40_00022_2025-13_1757572252406§ionId=100045§ionno=2&orderno=2&orgactid=AC_CEN_5_40_00022_2025-13_1757572252406

of persons from any provision of such rules.²³ This Act has been incorporated into the new Immigration and Foreigners Act, 2025.

The Citizenship (Amendment) Act, 2019 also mentions that an ‘illegal migrant’ is barred from citizenship, however there is exemption given for certain qualified persons, not to be treated as illegal migrant.²⁴

The Illegal Migrants (Determination by Tribunals) Act, 1983 provides for the establishment of a Tribunals for the determination, in a fair manner, of the question whether a person is an illegal migrant to enable the Central Government to expel illegal migrants from India.²⁵ Section 3(c) defines ‘illegal migrant’ as any person who is a foreigner, has entered into India on or after 25 March 1971 and without being in possession of valid passport or travel documents.

Apart from the legislative recognition, the refugees have also been subject to judicial protection as the judiciary has applied constitutional provisions to fill the vacuum and protect the human rights of the refugees. The Courts have asserted fundamental rights given under Article 14 of the Constitution i.e. right to equality, Article 21 of the Constitution i.e. right to life and Article 25 of the Constitution i.e. freedom of religion, as applicable not only to the citizens but also to the non-citizens. Therefore, the refugees in India have been assured the aforementioned rights, impliedly. Moreover, the refugees have the right to move to the Supreme Court under Article 32 and High Court under Article 226 for protection against arbitrary detention. The government has also been aligning the domestic policies with the international treaty obligations, under directive imposed under Article 51(c).

Thus, India’s approach to refugee regulations seeks to balance the human rights of refugees with the national interests of security, sovereignty and integrity of India.

X. TIBETAN REFUGEES IN INDIA

The Tibetan refugees in India are often regarded to be the ‘most successful’ refugee community in the world, which is primarily attributed due to the special status of ‘honoured guests’

²³The passport (entry into India) act, 1920, <https://indiankanoon.org/doc/1715361/>.

²⁴2019 12:10 IST Updated: Mar 06 Dec 19, The citizenship (amendment) act, 2019 [PDF 645 KB] Return to frontpage (2020), <https://www.thehinducentre.com/resources/article30327343.ece>.

²⁵The illegal migrants (determination by tribunals) act, 1983, <https://indiankanoon.org/doc/815726/>.

conferred to them by the Indian government, rather than mere foreigners. However, they are legally governed under the Immigration and Foreigners Act, 2025 (previously the Foreigners Act of 1946). The Tibetan influx started in 1959 when China invaded Tibet and demolished their institutions, monasteries and destroyed their culture and heritage. Moreover, the men, women and children were ill-treated. It was during this time that- Dalai Lama, the Tibetan spiritual leader, along with his 80,000 followers (approx.) took asylum in India. India accepted the Tibetan refugees on deep-rooted historical and cultural ties. Tibetans came to India in three separate phases: 1) Dalai Lama fleeing to India with his close relatives and ministers and taking refuge here, following Chinese invasion in 1959. 2) China partially opening Tibet to the world in the 1980s. 3) 1996-Present, often for religious, educational and economic reasons.²⁶

As per the Demographic Survey of Tibetans in Exile 2009, conducted by Planning Commission of Central Tibetan Administration 2010, approximately 1,28,014 population of Tibetan refugees are distributed worldwide, out of which India has 94,203 Tibetan refugees.²⁷ India has always respected Tibet's religious guru- 14th Dalai Lama; which has been a primary reason for supporting Tibetans and preserving their identity, culture and language. The Tibetan refugees have been allowed to do any job in India except government jobs. Moreover, the Indian government has allowed Tibetan markets in and around such settlements to support them economically. They can work in the handloom sector and produce and sell handicrafts and other goods to earn an income. Tibetans also benefit from the socio-welfare schemes of the government²⁸ such as Public Distribution System under which they can buy essential goods at affordable rates and the other one- Indira Awaas Yojana which builds houses for the homeless Tibetan refugees. Tibetan refugees are also provided with education and healthcare facilities and freedom of religion.

The Central Tibetan Administration (CTA) is the de-facto government-in-exile of Tibet, established to represent the Tibetan people and preserve their cultural, political and spiritual heritage; and is headquartered in Dharamshala, Himachal Pradesh.²⁹ According to Indian law, all Tibetan refugees born between 26 January 1950 and 1 July 1987 are eligible for Indian

²⁶Jaskaran Singh Waraich & Anuradha Choudhary, TIBETAN REFUGEE POPULATION IN INDIA (Reflections on India's Policy and India-China Relations), 42 JAPGI, 85-96 (2020).

²⁷Tibet in exile, Central Tibetan Administration, <https://tibet.net/about-cta/tibet-in-exile/>.

²⁸S. Irudaya Rajan, The Routledge Handbook of Refugees in India (2022).

²⁹Central Tibetan Administration, GKToday, <https://www.gktoday.in/central-tibetan-administration/>.

citizenship.³⁰ However, for that benefit, they have to abandon all the privileges and benefits given by CTA which also includes leaving their designated residential settlements.³¹ This can be elaborated through Question number 1296 in Rajya Sabha, related to Indian passport for Tibetans. The question stated whether the Tibetans who are seeking Indian passport would need to leave their settlements and benefits from CTA. To this, the answer was given from government's side as- Yes, Tibetan refugees, who are seeking Indian passports on the basis of being Indian citizens by birth, under relevant regulations of Indian Citizenship Act 1955, are not entitled to the benefits which are exclusively for Tibetan refugees.³² This causes a dilemma for Tibetan refugees because they are stateless people but government schemes and initiatives are used by them for various benefits. If they are granted citizenship, they have to leave behind all privileges of CTA; this is why most of the Tibetans do not apply for citizenship despite being eligible. However, they have been granted voting rights also; although it highlights the tension between their refugee status and aspirations for political participation.³³

In addition, the Tibetan refugees are granted with certain legal documents such as long term visas, registration certificate(RC) which is a legally mandated identity document, renewed annually to live, work and travel within India. 'Yellow Book' another identity certificate, allows the Tibetans to travel abroad. In India, the Tibetans are recognised as 'foreigners' instead of 'refugees'. Some important Tibetan settlements in India are- *Bomdila*(Arunachal Pradesh), *Darjeeling* (West Bengal), *Palrabling*, *Tashiling*, *Dharamshala* (Himachal Pradesh), *Gangtok* (Sikkim), *Shillong* (Meghalaya), etc. Thus, despite of certain challenges, the Tibetan refugees represent a unique combination of cultural preservation and humanitarian support.

XI. ROHINGYA REFUGEE CRISIS

The Rohingyas are a Muslim ethnic group originating from the Rakhine state in Myanmar. Rakhine is the least developed region in Myanmar with about 78% of the households living

³⁰Bhumika Indulia, Tibetan refugee born in India before 1 July 1987 is Indian citizen by birth; Delhi High Court directs issuance of passport The Bar Bulletin (2026), <https://thebarbulletin.com/tibetan-refugee-citizen-by-birth-delhi-hc/>.

³¹Jaskaran Singh Waraich & Anuradha Choudhary, TIBETAN REFUGEE POPULATION IN INDIA (Reflections on India's Policy and India-China Relations), 42 JAPGI, 85-96 (2020).

³²Question No.1296 Indian passport for Tibetans, http://www.mea.gov.in/rajya-sabha.htm?dtl%2F28748%2FQUESTION_NO1296_INDIAN_PASSPORT_FOR_TIBETANS=.

³³Swati Condrolli, "Refugee-Turned-Voters: Refugee Identity and Voting Rights among Exiled Tibetan Community in McLeodganj".

below the poverty line. They have a unique language and culture, and follow their own religion. Due to this, they are not recognised as a part of native population by the government in Burma. The government has denied citizenship to Rohingyas and they have been subject to continued violence, decades of persecution and religious abuse.³⁴ Myanmar rolled out its Citizenship law in 1982 that deprived the Rohingyas of citizenship. Under this law, full citizenship is only awarded to eight indigenous groups who settled in the country before the first occupation by the British in 1824.³⁵ This law rendered approximately 1 million Rohingyas stateless overnight. Communal riots and ethnic violence followed and in 2017, a large flight of about 7,00,000 – 8,00,000 Rohingyas was caused into neighbouring countries, particularly Bangladesh.³⁶ Infact, Cox's Bazaar in Bangladesh is one of the largest refugee settlements in the world.

Bangladesh was initially lenient to the Rohingyas but with the increasing number of immigrants, they chose to stop assistance for them. Countries like Malaysia and Thailand also did not allow them to stay on their territories even though, they provided them with basic necessities like food and medicine. Rohingyas then chose to move towards India. According to Ministry of Home Affairs, India is home to approximately 40,000 Rohingyas. However, India has classified them as illegal migrants and Rohingyas do not hold a refugee status in India. This can be supported through Question number 3593 in Lok Sabha related to the Rohingya issue. The question majorly asked the number of Rohingyas who are in the country with UN refugee cards and whether Rohingyas have any links with any terrorist organisation. To this, government answered that, since illegal migrants enter into the country without valid travel documents, accurate data regarding number of such migrants living in the country is not centrally available. There are reports about some Rohingya migrants indulging in illegal activities.³⁷

Although, there are refugee camps and settlements for Rohingyas but they do not have any legal status in India and are often subjected to violence, and deprived of even the basic rights. Rohingya migrants in India are often exposed to displacement, food insecurity, malnutrition, inaccess to healthcare and education facilities, etc. Children bear the brunt of the crisis, with 6 million in Rakhine State, facing confinement due to violence, forced displacement and

³⁴Kabir Md Shahin&Moyenul Hasan, *The Rohingya refugee crisis: political and humanitarian perspectives*, 23 Southeast Asia A Multidisciplinary Journal 151–161 (2023).

³⁵Stateless by law, The ASEAN Post (3 February 2019), <https://theaseanpost.com/article/stateless-law>.

³⁶ Sahana G S, REFUGEE CRISIS IN INDIA, 9 IJNRD, e196-e203 (2024).

³⁷MHA, <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2021-pdfs/LS-10082021/3593.pdf>.

limitations on freedom of movement.³⁸ They have no access to formal employment; primarily due to lack of documentation and are forced to work in informal sectors or low-paying jobs like rag picking and construction. Moreover, there is a social stigma attached to them relating to their religious identity and national security concerns that leads to feeling of alienation for them. From the perspective of the Indian government, Rohingyas raise concerns regarding illegal immigration and national security. In addition, these groups put economic and resource pressure on India. Indian government is also concerned with social and security threats such as illegal trade and drug trafficking.

India faces a dilemma incase of Rohingya immigrants between its humanitarian concerns and security concerns. On one side, it has an image of humanitarian democracy and has given refuge to various groups and now denying it to one community drives the conversation in a different direction. On the other hand, it fears illegal migration and is tackling to maintain its strategic ties with Myanmar and Bangladesh. This can be elaborated through Question number 2171 in Lok Sabha which stated whether the Government has faced any setbacks in Myanmar policy due to Rohingya issue. To this, the governments of both sides have agreed that the only lasting solution lies in the overall development of the Rakhine State in Myanmar. In this regard, Government has signed an MoU on the Rakhine State Development Programme with Myanmar in December 2017.³⁹

Therefore, Rohingya refugee crisis in India reflects dilemma between humanitarian aspects and national security concerns.

XII. JUDICIAL INTERPRETATIONS

The Guwahati High Court stayed the deportation of a Myanmar national for one month owing to the threats she faced upon immediate deportation in her country.⁴⁰

The Supreme Court clarified that while foreigners are entitled to Article 21, they do not have the absolute right to reside and settle in India; which is inherent under Article 19. The government

³⁸Far from the headlines: Myanmar - the rohingya crisis, <https://unric.org/en/myanmar-the-rohingya-crisis/>.

³⁹Question no. 2171 Rohingya issue, https://www.mea.gov.in/lok-sabha.htm?dtl/34628/QUESTION_NO_2171_ROHINGYA_ISSUE.

⁴⁰Zothansangpuii v. State of Manipur and Another, (1989).

has absolute power to deport refugees; provided it follows the procedure established by law and principles of natural justice.⁴¹

The apex court held that Article 21 applies to all persons and State has the duty to protect the refugees from forceful eviction by groups. The state was directed to ensure safety while processing their citizenship claims.⁴²

It was held by the apex court that any Tibetan born in India after 26 January 1950 and before 1 July 1987 are Indian citizens by birth. The government was directed to issue them Indian passports rather than treating them as stateless refugees and issuing Identity certificates.⁴³

It was held by Delhi High Court that Article 21 extends to non-citizens also. It protected refugees from forcible deportation without following due process and considering risks they would face in their country.⁴⁴

The Supreme Court refused to stay the deportation of Rohingya refugees on grounds of national security. It was held that India is not bound by the 1951 Refugee Convention, therefore deportation i.e. refoulement allowed as per procedure established by law.⁴⁵

In a recent case, Delhi High Court ruled that Tibetan women born in 1966 is Indian citizen by birth; and the government cannot alter the citizenship vested under the act by administrative policies.⁴⁶

XIII. CRITICAL ANALYSIS

The comparative evaluation of Tibetans and Rohingyas in India, reflects that India does follow differential treatment in dealing with various refugee groups. As India is not a signatory to the 1951 Convention or 1967 Protocol; the refugees are governed on a case-to-case basis and ad-hoc administrative policies. On one side, Tibetans are granted protection, given official recognition and provided organised settlements, access to education and employment. On the other side,

⁴¹Louis De Raedt & Ors vs Union Of India And Ors, (1991).

⁴²National Human Rights Commission vs State Of Arunachal Pradesh &Anr, (1996).

⁴³Namgyal Dolkar v. Government of India, Ministry of External Affairs, (2010).

⁴⁴DonghLian Kham &Anr. vs Union Of India &Anr., (2015).

⁴⁵Mohammad Salimullah vs Union Of India, (2021).

⁴⁶Ms. YangchenDrakmargyapon vs Union Of India Through Its Secretary, (2026). .

Rohingyas are classified as ‘illegal immigrants’, viewed as threat to national security and are restricted to informal camps, limited access to basic rights and risk of detention and deportation. India is often criticised for this because historically, it has always prioritised humanitarian aspects. But, national security is always of great importance in refugee policy. The host country is a strategic actor weighing the pros and cons of different refugee policies. Large numbers of asylum seekers pose a real or perceived security risk.⁴⁷ Moreover, if India gives refuge to all groups; it will increase the pressure on the resources of the nation. The natives would be subjected to discrimination because they would have to share the resources with them, which they might find to be inequitable. Therefore, India’s stance of differential treatment to refugees is a justified distinction and not arbitrary discrimination.

XIV. CONCLUSION

Refugees are the persons forced to migrate from their own country owing to various reasons that may include, political, economic or war hardships. While international obligations and organisations like UNHCR are committed to the protection of refugee rights, it varies country to country. When we talk about India particularly, it is not a signatory to such conventions and does not have any domestic refugee law also. Therefore, the refugees in India are governed by ad hoc policies. This is the primary reason for differential treatment to the refugee groups in India as we see distinction between Tibetan refugees and Rohingya migrants. Despite of criticisms, India hold a clear stance in the refugee issue as it continues to prioritise national security and national interests over accepting and giving refuge to all groups on humanitarian grounds. This is done so as to protect the resources and internal peace of the nation. However, it also underscores the need for a uniform domestic refugee law that is clear and justified enough to govern refugees in India. Moreover, India needs to align its deportation policy so as to balance the protection of refugee rights and non-refoulement on one hand with domestic interests and national security on the other hand.

⁴⁷Kabir Md Shahin&Moyenul Hasan, *The Rohingya refugee crisis: political and humanitarian perspectives*, 23 Southeast Asia A Multidisciplinary Journal 151–161 (2023).

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